

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL CHARLES GRADY

Appeal 2006-2302
Application 10/617,270
Technology Center 1700

Decided: August 28, 2007

Before CHUNG K. PAK, PETER F. KRATZ, and
JEFFREY T. SMITH, *Administrative Patent Judges*.

KRATZ, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

This appeal includes a record that is not ripe for review and pursuant to 37 C.F.R. § 41.50(a) (2006), we remand this application to the Examiner to take appropriate action consistent with our comments below. 37 C.F.R. §§ 41.35(b) and 41.50(a)(1) (2006).

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The Appeal Brief filed October 27, 2005 includes a Status of Amendments section and a Claims Appendix that reflects entry of an Amendment after Final Rejection filed August 25, 2005 at least as to claims 1, 3, 5, 32, and 33 (Br. 2). However, an Advisory Action mailed September 15, 2005 indicates that the Amendment after Final Rejection filed August 25, 2005 was not entered. No exception as to the entry of amendments to claims 1, 3, 5, 32, and 33 is furnished in that Advisory Action. The Examiner's Answer appears to be inconsistent with the file record as reflected by the above-noted Advisory Action (Answer 3, Item 4).

This inconsistency in the record requires resolution prior to our rendering a decision on this appeal. In addition, we note that appealed product claims 30 and 31 have received little, if any, attention in the Final Office Action and the Answer leaving an undeveloped appeal record with regard thereto.

37 C.F.R. § 41.37(d) (2006) states that:

If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Thus, upon return of this application, the Examiner should review the above-noted matters and take appropriate action to correct the record.

We note that Appellant's complete position on appeal should be presented in any amended Brief that may be filed in response to any Notification of Defective Brief prepared and mailed by the Examiner in

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response to this Remand. Likewise, the Examiner's complete position as to any maintained rejections should be presented in a Substitute Answer in response to any Amended Brief that may be filed.

This Remand to the Examiner pursuant to 37 C.F.R. § 41.50(a)(1) is not made for further consideration of a rejection.

REMANDED

tf/ls

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